

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ROYCE HOMES, L.P.

Alleged Debtor

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**Bankruptcy Case: 09-32467
(Chapter 7)**

**MOTION OF DECKER OAKS DEVELOPMENT II, LTD.
FOR RELIEF FROM AUTOMATIC STAY**

TO ALL CREDITORS AND PARTIES-IN-INTEREST:

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE OF THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST TWO (2) DAYS BEFORE THE HEARING. IF YOU FILE YOUR RESPONSE LESS THAN FIVE (5) DAYS BEFORE THE HEARING, YOU MUST SEND A COPY TO THE MOVANT BY FACSIMILE, BY HAND, OR BY ELECTRONIC DELIVERY. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE. IF THIS MOTION IS OPPOSED, THE HEARING ON THIS MOTION IS SET FOR 8:45 A.M., APRIL 17, 2009, IN COURTROOM 600, 515 RUSK AVENUE, HOUSTON, TEXAS 77002, BEFORE THE HONORABLE JEFF BOHM.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE JEFF BOHM, UNITED STATES BANKRUPTCY JUDGE:

NOW COMES Decker Oaks Development II, Ltd. ("Decker Oaks"), Defendant and Counter-Plaintiff in Adversary Proceeding No. 07-3421, styled *Royce Homes, L.P. v. Decker Oaks Development II, Ltd. and Robert Weedn, Individually*, filing this Motion of Decker Oaks Development II, Ltd. For Relief from Automatic Stay, and in support thereof, Decker Oaks would respectfully show the Court the following:

JURISDICTION AND VENUE

1. This motion is brought under 11 U.S.C. §§ 361 and 362 and Rules 4001 and 9014 of the Bankruptcy Rules of Federal Procedure. Subject matter jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) for relief from the automatic stay pursuant to Title 11, United States Code, § 362(d), and is brought by motion pursuant to Bankruptcy Rules 4001 and 9013. Venue is proper in this Court.

RELEVANT BACKGROUND

2. Following a three-day trial before this Court in Adversary Proceeding No. 07-3421, this Court awarded Decker Oaks \$2,309,500 in damages for tortious interference as well as \$62,000 in escrow money deposited by the alleged debtor herein, Royce Homes, L.P. ("Royce"), in connection with the contract of sale for lots in a subdivision known as the Villages of Decker Oaks.

3. As alternative security in lieu of a supersedeas bond, this Court ordered Royce to open an interest bearing account with Stewart Title pledged to Decker Oaks into which \$500 from each closing was to be deposited along with \$25,000 in earnest money associated with the unenforceable contract for the purchase of lots in the subdivision known as Saratoga Springs.

4. On March 18, 2009, the district court on appeal (Civil Action No. 4:08cv2070) reversed this Court's damages award for tortious interference and held that Royce was entitled to the \$62,000 in earnest money.

5. On March 30, 2009, Decker Oaks filed in the district court a Motion for Rehearing and Request to Set Aside and Amend Judgment on appeal pursuant to Rule 8015 of the Federal Rules of Bankruptcy Procedure. Decker Oaks contends the district court erred in

finding plain error and, accordingly, erred in reversing this Court's judgment for tortious interference with a contract. To date, the district court has not ruled on Decker Oaks' motion.

6. On April 7, 2009, an involuntary bankruptcy proceeding (the cause herein, Bankr. Case No. 09-32467) was initiated with Royce Homes, L.P. named as the alleged debtor.

7. On April 8, 2009, Royce Homes filed in the district court a Reply to Decker Oaks' Motion for Rehearing and Request to Set Aside and Amend Judgment.

8. Decker Oaks now moves this Court for relief from the automatic stay in order to proceed with the appeal of the district court's reversal of this Court's judgment in Adversary Proceeding No. 07-3421.

**REQUEST FOR RELIEF FROM AUTOMATIC STAY
TO PURSUE APPEAL**

9. Pursuant to § 362(d) of the Bankruptcy Code, the Court may grant relief from the automatic stay for "cause."

10. Decker Oaks requests that this Court lift the automatic stay pursuant to § 362(d) to allow Decker Oaks to pursue relief in the district court on its Motion for Rehearing and, if necessary, initiate an appeal to the 5th Circuit Court of Appeals.

WHEREFORE, Decker Oaks Development II, Ltd, respectfully requests that the Court lift the automatic stay imposed herein so that Decker Oaks may pursue its appeal of the district court's reversal of this Court's judgment in Adversary Proceeding No. 07-3421.

Respectfully submitted,

DYLEWSKI & ASSOCIATES, P.C.

By: /s/ Dennis M. Dylewski

Dennis M. Dylewski

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ATTORNEY FOR DECKER OAKS
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OF COUNSEL:

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CERTIFICATE OF CONFERENCE

I hereby certify that I contacted Patrick Hughes, counsel for the petitioning creditors, Patricia Hair, litigation counsel for the alleged debtor, and David Jones, proposed counsel for the alleged debtor by email and telephone on April 15, 2009. Patrick Hughes and Patricia Hair responded that they have no opposition to this Motion. I did not receive a response from David Jones.

/s/ Margaret M. McClure

MARGARET M. MCCLURE

CERTIFICATE OF SERVICE

I hereby certify that, on April 15, 2009, a true and correct copy of the above and foregoing Motion was served the petitioning creditors' counsel, Patrick Hughes, the proposed counsel for the alleged debtor, David Jones, and litigation counsel for the alleged debtor, Patricia Hair.

/s/ Dennis M. Dylewski

Dennis M. Dylewski

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In re:

ROYCE HOMES, L.P.

Alleged Debtor

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Bankruptcy Case: 09-32467
(Chapter 7)

ORDER GRANTING RELIEF FROM AUTOMATIC STAY OF 11 U.S.C. § 362

The Court, having considered the Motion of Decker Oaks Development II, Ltd. for Relief from Automatic Stay, and it appearing to the Court that there is good cause for granting the Motion, it is hereby

ORDERED that the automatic stay of 11 U.S.C. § 362 is terminated as to Decker Oaks Development II, Ltd. for the limited purpose of allowing Decker Oaks Development II, Ltd. to pursue appeal of the District Court's Memorandum and Order reversing the Bankruptcy Court's Final Judgment in Adversary Proceeding No. 07-3421, styled *Royce Homes, L.P. v. Decker Oaks Development II, Ltd. and Robert Weedn, Individually*, and currently pending before United States District Judge Lee Rosenthal under Civil Action No. 4:08cv2070, and until final disposition of the above-styled and numbered adversary proceeding is reached either by final judgment of this Court on remand, the District Court on appeal, or the 5th Circuit Court of Appeals or the United States Supreme Court, if appeal is taken to those courts, or by agreement of Decker Oaks Development II, Ltd. and Royce Homes, L.P., the alleged debtor herein.

SIGNED this the _____ day of April, 2009

UNITED STATES BANKRUPTCY JUDGE